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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

SAMIR ABADIR et al.,

Plaintiffs and Appellants,

v.

WELLS FARGO BANK NA et al.,

Defendants and Respondents.

E058399

(Super.Ct.No. RIC1205602)

OPINION

APPEAL from the Superior Court of Riverside County. Paulette Durand-Barkley, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Samir Abadir and Mereille Abadir, plaintiffs in pro. per., for Plaintiffs and Appellants.

Wright Finlay & Zak, T. Robert Finlay, Nicholas G. Hood and Kathryn A. Moorer for Defendants and Respondents.

In a Second Amended Complaint (SAC), plaintiffs and appellants Samir and Mereille Abadir (collectively, “the Abadirs”) sued defendants and respondents Wells Fargo Bank, N.A. (the Bank) and others for (1) fraud, (2) wrongful foreclosure/negligence, (3) negligent misrepresentation, (4) breach of a written forbearance agreement, (5) unfair competition (Bus. & Prof. Code, § 17200), (6) quiet title, and (7) declaratory relief.¹ The trial court sustained the Bank’s demurrer to the SAC without leave to amend. The Abadirs contend the trial court erred by (1) sustaining the demurrer; (2) denying the Abadirs leave to amend the SAC; and (3) finding the Abadirs lacked standing. We affirm the judgment.

FACTUAL AND PROCEDURAL HISTORY

The Abadirs set forth the following facts in their SAC: In May 2006, the Abadirs purchased property at 45273 Laurel Glen Circle, in Temecula (the property). The Abadirs used a mortgage to make the purchase, and a deed of trust was recorded against the property. After several transfers, the deed of trust belonged to the Bank. In 2008, the Abadirs failed to make their mortgage payments. The Abadirs contacted the Bank requesting forbearance of their mortgage payments.

In July 2008, a notice of trustee sale was posted on the property. Also in July 2008, the Bank offered the Abadirs a forbearance plan. The Abadirs made payments to the Bank in compliance with the forbearance plan. The Bank accepted the first

¹ On September 3, 2014, we affirmed the Abadirs foreclosure case related to a different property. (*Samir Abadir et al. v. Wells Fargo Bank, N.A. et al.* (Sept. 3, 2014, E058013) [nonpub.opn.])

payment, but, beginning in November, refused the Abadirs' other payments. On December 1, 2008, the Abadirs "received a full offer of forbearance" from the Bank. The "full offer" included a new deed of trust, which was for \$50,000 more than the Abadirs owed, including the penalties, interest, and "delinquent payments." The Abadirs returned the unsigned proposed deed of trust and full offer of forbearance to the Bank.

On December 11, 2008, the Bank informed the Abadirs that the Bank would consider a loan modification for the Abadirs. The Abadirs provided various financial documents in support of the loan modification process, such as income information. From January 2009 through December 2011, the Abadirs repeatedly submitted financial documents, in hopes of obtaining a loan modification. In January 2011, the Abadirs were given a proposed loan modification. However, the Abadirs rejected the modification because the principal and interest rate were higher than the original loan, resulting in a loan payment that was too high.

On January 3, 2012, the Bank informed the Abadirs that their loan was "under the scrutiny of two separate departments"—the foreclosure department and the loan modification department. The foreclosure department "was demanding" the property be foreclosed. The trustee sale took place on January 6. The Bank took possession of the property.

DISCUSSION

A. DEMURRER

The Abadirs contend the trial court erred by sustaining the Bank's demurrer. Specifically, the Abadirs write, "The matter here has several causes of action that are not vulnerable to the objection supported by Respondent[']s very own demurrer" The foregoing sentence reflects the Abadirs believe only "several" of the seven causes of action should have survived the demurrer. The Abadirs also write, "Appellants' causes of action state facts sufficient to state a legitimate cause of action against Respondents." Depending on how the foregoing sentence is read, it implies that all seven of the Abadirs' causes of action, or perhaps only one, should have survived the demurrer. Finally, the Abadirs write, "[F]acts sufficient to state the cause of action remain within the pleading." The foregoing sentence reflects only one of the causes of action should have survived the demurrer. In sum, it is difficult to know if the Abadirs are asserting error as to all, some, or one of the causes of action.

The Abadirs' opening brief does not include record citations (Cal. Rules of Court, rule 8.204(a)(1)(C) [record citations]), and does not explain how any of the causes of action are sufficient. The Abadirs only repeat the basic assertion that they pled sufficient facts, but provide no explanation of (1) which cause or causes of action is/are being discussed; and (2) how the facts are sufficient to support the cause(s) of action.

As an example of the problems created by the lack of specific legal arguments, we will address the wrongful foreclosure cause of action. Prior to a property being sold

at a trustee's sale, a borrower can cure his/her default and have the loan reinstated. (Civil Code, § 2924c, subd. (a)(1)&(2).) If, after the default, but before the trustee's sale, the bank and the borrower reach an enforceable agreement to modify the terms of the loan and bring the loan current, and payments are made per that modification agreement, then the borrower would have a cause of action for wrongful foreclosure if the trustee's sale were executed. (*Barroso v. Ocwen Loan Servicing, LLC* (2012) 208 Cal.App.4th 1001, 1017.)

The SAC does not reflect that an enforceable loan modification agreement was reached or that the Abadirs made payments pursuant to such an agreement. In the SAC, the Abadirs allege the Bank accepted one payment in 2008 related to a "forbearance proposal," but after 2008 payments stopped, and the Abadirs rejected the two loan modifications that were offered to them. Given the facts pled in the SAC, there is not a cause of action for wrongful foreclosure because there does not appear to be a modification agreement or payments made per the agreement.

The Abadirs offer no substantive argument related to the wrongful foreclosure cause of action or any of the other six causes of action. Without specific legal arguments we cannot determine why the Abadirs believe the trial court erred. Also, due to the lack of record citations, we are unable to infer the Abadirs' contentions. (Cal. Rules of Court, rule 8.204(a)(1)(B) [legal argument] & (a)(1)(C) [record citations].) This court cannot furnish legal arguments as to how the trial court's ruling might have

constituted error.² (*Doe v. Lincoln Unified School Dist.* (2010) 188 Cal.App.4th 758, 767.) When an “appellant makes a general assertion, unsupported by specific argument,” the appellant forfeits the issue on appeal. (*Los Angeles Unified School Dist. v. Casasola* (2010) 187 Cal.App.4th 189, 212; *People v. Stanley* (1995) 10 Cal.4th 764, 793.) Here, the Abadirs only provide the basic and general assertion that they alleged sufficient facts to survive a demurrer, but the Abadirs have failed to specify which causes of action are sufficient and how they are sufficient. Accordingly, we conclude the issue has been forfeited.

B. AMENDMENT

The Abadirs contend the trial court erred by denying them an opportunity to amend the SAC because the Bank “would not have been prejudiced in any way” by the Abadirs being granted leave to amend. The Abadirs provide no legal authority supporting the proposition that the legal standard for amendment involves prejudice to the other party. The Abadirs’ amendment argument is devoid of any legal and record citations. (Cal. Rules of Court, rule 8.204(a)(1)(B) [legal argument] & (a)(1)(C) [record citations].)

Contrary to the Abadirs’ position, when a party seeks to demonstrate a trial court erred in denying leave to amend, then the party must establish that it could cure the

² We considered addressing the issues by relying on the Bank’s interpretation of the Abadirs’ arguments and using the law cited by the Bank in its respondent’s brief. Our efforts to approach the case in this manner were hampered by the Bank’s reliance on multiple unpublished district court cases. (See *Pacific Shore Funding v. Lozo* (2006) 138 Cal.App.4th 1342, 1352, fn. 6 [unpublished federal opinions are citable only as persuasive authority].)

defect in the pleading. As explained in *Traders Sports, Inc. v. City of San Leandro* (2001) 93 Cal.App.4th 37, 43 through 44, ““The plaintiff bears the burden of demonstrating a reasonable possibility to cure any defect by amendment. [Citations.] A trial court abuses its discretion if it sustains a demurrer without leave to amend when the plaintiff shows a reasonable possibility to cure any defect by amendment. [Citations.] If the plaintiff cannot show an abuse of discretion, the trial court’s order sustaining the demurrer without leave to amend must be affirmed. [Citation.]”

The Abadirs’ argument concerning a lack of prejudice fails to address the legal issue, i.e., whether the Abadirs could cure the defects in the SAC. Since the Abadirs’ argument misses the legal issue and lacks record and legal citations, we find the argument to be unpersuasive.

C. STANDING

1. *PROCEDURAL HISTORY*

In April 2011, Samir Abadir (Samir) filed for Chapter 7 bankruptcy. At the trial court, in the Bank’s demurrer, the Bank asserted Samir was judicially estopped from bringing this wrongful foreclosure lawsuit because Samir did not include the lawsuit claims in his bankruptcy filings. Essentially, by failing to disclose the legal claims against the Bank as part of the bankruptcy, Samir’s creditors did not have knowledge of the assets/claims, and therefore, Samir is now judicially estopped from raising the legal claims. (See *Oneida Motor Freight, Inc. v. United Jersey Bank* (1988) 848 F.2d 414, 417 [“The result of a failure to disclose such claims triggers application of the doctrine of equitable estoppel, operating against a subsequent attempt to prosecute the actions”];

Hamilton v. Greenwich Investors XXVI, LLC (2011) 195 Cal.App.4th 1602, 1609

[California court applying the *Oneida Motor Freight* rule].)

At the hearing on the demurrer, the Bank asked the trial court to repeat its tentative ruling as to Samir. The trial court said, “[M]y tentative is to sustain without leave due to the bankruptcy issues.” In regard to Mereille Abadir (Mereille) the court said its tentative decision was to sustain the demurrer without leave to amend on the second, fourth, sixth, and seventh causes of action, but grant leave to amend on the first, third, and fifth causes of action. The trial court took the matter under submission saying it would “look at [the issues] again.”

In the order sustaining the demurrer, the trial court wrote, “Defendants’ Demurrer to Plaintiffs’ Second Amended Complaint is sustained in its entirety without leave to amend.” The trial court did not give reasons for its ruling. The trial court’s minute order also does not give reasons for the ruling. In the judgment of dismissal, the trial court cited the order sustaining the demurrer without leave to amend and ordered judgment be entered against the Abadirs.

2. ANALYSIS

The Abadirs contend the trial court erred by ordering “dismissal of Appellants” due to a lack of standing. Alternatively, the Abadirs assert that if the trial court correctly found Samir lacked standing, then the trial court erred by finding Mereille lacked standing.

The Abadirs do not provide record citations to support their contention. (Cal. Rules of Court, rule 8.204(a)(1)(C) [record citations].) The lack of citations is

problematic. As an example, we cannot determine why the Abadirs assert the trial court found Mereille lacked standing. If the Abadirs had provided record citations, we could better understand the issue.

It appears from the record that the trial court sustained the demurrer, at least as to Mereille, due to a lack of sufficient facts to support the causes of action. We have concluded *ante*, that the Abadirs have failed to establish the trial court erred in this judgment. Since the causes of action are deficient, the standing issue is moot. Assuming Samir was not judicially estopped, the SAC fails to set forth a valid cause of action. Therefore, the judgment would still be affirmed. Accordingly, we do not address the standing issue because it is moot. (*Carson Citizens for Reform v. Kawagoe* (2009) 178 Cal.App.4th 357, 364 [a case is moot when a ruling can have no practical impact or provide any effectual relief].)

DISPOSITION

The judgment is affirmed. Respondents are awarded their costs on appeal.

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MILLER

J.

We concur:

RAMIREZ

P. J.

KING

J.